

**ORIGINAL**Decision No. 68541

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates and practices of WILLIAM L. ) Case No. 7951  
 COTTON and WILBERT G. DODD, part- )  
 ners, doing business as BILL'S )  
 TRUCKING. )

William L. Cotton, in propria persona.  
B. A. Peeters and J. B. Hannigan, for  
 the Commission staff.

O P I N I O N

By its order dated July 21, 1964, the Commission instituted an investigation into the operations, rates and practices of William L. Cotton and Wilbert G. Dodd, doing business as Bill's Trucking.

A public hearing was held before Examiner Gravelle on September 16, 1964 at San Francisco.

Respondents presently conduct operations pursuant to Highway Contract Carrier Permit No. 43-4727 dated October 29, 1963 and City Carrier Permit No. 43-4846 dated November 15, 1960. Respondents have a terminal in San Francisco, California. They own and operate three tractors, four trailers, five bobtails and one pickup truck. They employ seven drivers and one person to do clerical work. Respondents also drive and do clerical work. Their gross revenue was \$179,770 for the calendar year 1963 and \$87,687 for the first two quarters of 1964. Copies of the appropriate tariffs and the distance table were served upon respondents.

On February 26, 27 and 28, 1964, and again on March 2, 3, 10, 16, 17, 1964, a representative of the Commission's Field Section

visited respondent's place of business and checked their records for the period from August 1, 1963 through March 31, 1964, inclusive. The Commission representative checked 3,000 shipments that were made during said period. The underlying documents relating to 60 shipments were taken from respondent's files, photocopies made, and the copies then sent to the License and Compliance Branch of the Commission's Transportation Division. The copies of those shipping documents comprise Exhibit No. 1. Based upon the data taken from the shipping documents, as well as information supplied by the field representative, a rate study was prepared and introduced in evidence as Exhibit No. 3. Said exhibit reflects asserted undercharges in the amount of \$968.95.

One of the bases for the above sum was that respondents had provided free transportation. Another basis of undercharge was that respondents had collected C.O.D. shipments without having a bond in effect to cover such a transaction.

Parts 33 through 56 of Exhibits Nos. 1 and 3 reflect the transportation that was claimed to have been performed free. Respondents, who testified in their own behalf, offered no explanation for the failure to collect transportation charges relative to Parts 33 through 38 of the exhibits. They did explain that the transportation indicated by Parts 39 through 56 had been billed for and collected. These latter parts concerned customers with whom respondents had made special arrangements for billing either on a weekly basis or at the completion of shipment. Respondent Cotton admitted that with regard to Part 39 the amount collected was \$21.04 whereas the minimum charge as computed by the staff rate expert was \$24.16, hence as to that part an undercharge of \$3.12 remains. As to Parts 40 through 56 there are no undercharges. There may have been a failure to properly document the transactions, or to properly

and timely bill them. The staff however offered no proof of such activity but relied on their claim of free transportation. The evidence establishes that these shipments were billed for and payment was received upon terms agreed upon by the shipper and respondent prior to the performance of the transportation. The fact that payment was received after the staff representative made his investigation does not establish prima facie undercharges at the time of investigation and there were patently no undercharges at the time of hearing.

Parts 57 through 60 of Exhibits Nos. 1 and 3 reflect the transportation that involved collection of C.O.D. shipments. It was shown by the staff and not contradicted by respondents that they had no C.O.D. bond in effect. Respondent Dodd testified that Parts 58 and 60 were shipments in which respondents, upon delivery to the consignee, picked up a check drawn by the consignee and made payable to the consignor. The check included payment for the goods and transportation charges. Said check was delivered by respondents to the consignor who was subsequently billed.

Item No. 180 of Minimum Rate Tariff No. 2 defines a C.O.D. shipment. Under that definition a shipment is determined to be C.O.D. if tendered by the consignor to the carrier upon the condition that the carrier accept payment and remit it to the consignor. The documents in Exhibit No. 1 indicate that respondent accepted these shipments upon such a condition and hence violated said Item No. 180. Respondent Dodd testified that Part 59 was a shipment that was never delivered due to the fact that the consignee refused to accept the commodities when tendered by respondents. In the circumstances the charge for C.O.D. fee is not applicable. It had been previously explained by respondent Cotton that respondents do not regularly engage in collection of C.O.D. shipments; he testified that such

shipments occur only about once in six months and are performed by respondents only as a courtesy to their customer.

The rate expert for the Commission staff indicated in his testimony that a good number of the undercharge violations had occurred because respondents had employed rates in effect prior to October 12, 1963, a date on which a rate change became effective. This fact was admitted by respondent Cotton who claimed to have been unaware of the change. Other violations involved improper handling of split delivery shipments, improper consolidation of multiple lot shipments and failure to assess off-rail charges. This latter type of violation was corrected in January 1964.

Taking into account the collection by respondents of Parts 39 through 56 and the actual undercharge in Part 39 and excluding Part 59, we find undercharges totaling \$817.52.

Staff counsel requested that a fine be paid equal to the amount of undercharges found pursuant to Sections 3800 and 4140 of the Public Utilities Code and an additional punitive fine in the amount of \$500 pursuant to Sections 3774 and 4112 of the Public Utilities Code. Respondents received an undercharge letter on August 30, 1961 and collected \$108.98 in undercharges.

Respondent Cotton argued that the undercharge letter should be disregarded, it having involved only one customer, that Commission representatives had examined his records repeatedly since he began business as a permittee in 1956 and aside from the instant case and the one undercharge letter, he had done nothing wrong and that the present case involved honest mistakes on his part with no intention to violate the law. He stated that all the errors would be corrected in future transactions.

After consideration the Commission finds that:

1. Respondents operate pursuant to Highway Contract Carrier Permit No. 43-4727 and City Carrier Permit No. 43-4846.

2. Respondents were served with appropriate tariffs and the distance table.

3. Respondents charged less than the lawfully prescribed minimum rate in Parts 1 through 39 and Parts 57, 58 and 60 of Exhibit No. 3, resulting in undercharges of \$817.52.

4. Respondents handled C.O.D. shipments without first having a C.O.D. bond on file with the Commission.

Based upon the foregoing findings of fact, the Commission concludes that respondents violated Sections 3664, 3667, 3737 and 4013 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$817.52, and that in addition thereto respondents should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

The Commission expects that respondents will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. The staff of the Commission will make a subsequent field investigation into the measures taken by respondents and the results thereof. If there is reason to believe that respondents or their attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Respondents shall pay a fine of \$1,317.52 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

3. In the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondents shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondents shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the undercharges remaining to be collected and specifying the action taken to collect such undercharges, and the result of such action, until such undercharges have been collected in full or until further order of the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondents. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 3<sup>rd</sup> day of FEBRUARY, 1965.

Frederick B. Hobbloff  
President

[Signature]

George E. Trover

William B. Beard  
Commissioners